

Legal Issues for DERs



Legal Issues for DER's



FAA Designees and the Law

or,

Hints to avoid traps for the unwary.

Engine & Propeller
Directorate
DER Seminar

May 2004



Legal Issues for DER's



Topics covered

- Designation authority and limits
- Litigation issues
- Design Data and Property rights
- Major vs. Minor
- Replacement Parts
- Electronic Data

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Designation Authority

- § 44702(d)
 - Private person or employee of a person
 - Examination, testing, inspection, certification
- Part 183
 - Letter of designation defines limits of authority
 - Procedure for non-renewal or termination

May 2004

DER Seminar



Legal Issues for DER's



Designation Authority

- Designation letter and Certificate
 - Reference to tables in Order 8110.37
- Resolve ambiguity before performing work
- Have supervising office provide written confirmation of oral discussions about the limits of designation

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Litigation Issues

- Did the designee have authority to perform the task?
- Did the designee perform that task negligently?
- Who is going to pay?

May 2004

DER Seminar



Legal Issues for DER's



Should the FAA pay?

- FAA pays for “negligent or wrongful act or omission of any employee of the Government while acting within the scope” of office or employment
- 28 U.S.C. §1346(b)
- Who is an employee?

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Should the FAA pay?

- 28 U.S.C. §2671 provides definition of the term “employee”
- “... persons acting on behalf of a federal agency in an official capacity ...”
- “Independent Contractor” exception
- Supervision and control of day to day acts

May 2004

DER Seminar



Legal Issues for DER's



Employee or not?

- Regulatory oversight does not mean day to day control
- Statute specifies that designee is a “private person”
- FAA does not supply tools and work conditions

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Design Data and Property Rights

- FAA “design approval” distinct from data
- Data belongs to the applicant
 - FAA access does not mean FAA ownership
 - FAA must have access for any reason
- FAA may approve changes to “approved design” (STC on STC)
- FAA may approve replacement parts

May 2004

DER Seminar



Legal Issues for DER's



Major vs. Minor

- To STC or not to STC?
 - Initial assumption that change is major
 - Tests to determine if change is major
- Do not STC if tests determine change is minor

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Replacement Parts

- Guidelines to use:
 - What is it?
 - Conforms to an approved design
 - Who made it?
 - A product of a production approval holder's quality system
 - Can I use it on this product?
 - Eligible for installation

May 2004

DER Seminar



Legal Issues for DER's



Electronic Data

- FAA Order 8000.79, electronic transmission of data and alternative storage methods.
- Establish a written procedure between the company and the FAA office
- Contact the Directorate focal point
 - see AIR Guide

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Docket Management System

- An electronic filing system for docket material
- Accessible via the Internet at:
 - <<http://www.dms.dot>>
 - <<http://199.79.179.10>>
- Designed, created, managed by DOT

May 2004

DER Seminar



Legal Issues for DER's



Docket Management System

- Replaces the “paper” docket
- DMS is the only record of the docket
- Comment submitted electronically
- SB's will not be placed in docket
- Do not sent proprietary material to docket

May 2004

DER Seminar

Legal Issues for DERs



Legal Issues for DER's



Conclusions

- Stay within your authorization
 - Document discussions of changes
- Obtain liability insurance coverage
 - employer may cover DER's
- Know FAA procedures
- Document your work

May 2004

DER Seminar



Legal Issues for DER's



Who are we?

- Chris Poreda
 - Regional Counsel, ANE-7
- Vincent Bennett
 - Directorate Counsel
- Tel. 781-238-7040 / FAX 781-238-7055
- Vincent.Bennett@faa.gov
- Chris.Poreda@faa.gov

May 2004

DER Seminar